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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/741,208	12/19/2000	David P. Henzerling	42390P10397	7691

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EXAMINER

HESS, DANIEL A

ART UNIT PAPER NUMBER

2876

DATE MAILED: 04/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/741,208

Applicant(s)

HENZERLING, DAVID P.7

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

Receipt is acknowledged of amendment received 4/10//2003.

#### *Specification*

1. As stated in the previous action, as well as the action before that, the abstract of the disclosure is objected to because it is too short and lacks detail. Correction is required. See MPEP § 608.01(b).

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Normally, due to repeated failure of the applicant to address this, the action would be considered non-responsive. However, because this action is made final, the point is considered moot.

#### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 6-8, 11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi in view of Fanning et al. (US 6,366,907), hereinafter referred to as Napster.

Re claims 1-4 and 13: A user requests music files to be received wirelessly into a car (column 15, lines 1-20). Note the word 'request' is used explicitly (column 15, lines 7; 12; 13). There is (column 6, lines 18-20) non-volatile memory/flash memory. The word 'download' (column 15, lines 10-11) implies local storage. Razavi shows (column 11, lines 60-67) a set-up in which an internal car network (column 1, lines 5-10) is connected to an ISP. The user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Razavi fails to show (re claim 6) receiving a requested music file from another automobile or (re claim 7) transmitting a music file from an automobile.

Napster shows (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server.

In view of Napster, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known peer-to-peer type transmission of

music files as taught by Napster in the teachings of Razavi because peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files.

Re claims 6, 7 and 15: Given the nature of peer-to-peer, this is implied.

Re claim 8: An ISP (Internet Service Provider - see discussion re claim 1 above) amounts to a computer running certain software.

Re claim 11: Wireless downloading of music files (column 15, lines 1-20) implies a wireless receiver and means to store the file.

Re claim 14: It is inherent. The purpose of Razavi's embodiment is to bring music to a car, which is meaningless unless it is played.

5. Claims 9 and 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi as modified by Fanning as applied to claim 1 above, and further in view of Tosaya (US 6,323,893). The teachings of Razavi have been discussed above.

Razavi fails to teach the use of the Bluetooth protocol for the wireless aspect of communications.

Tosaya (column 5, line 56) uses Bluetooth as a wireless communications protocol.

In view of Tosaya, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Bluetooth protocol to exchange data wirelessly as taught by Tosaya in to the teachings of Razavi because Bluetooth is a standard with hardware and software support in industry and using it allows standard parts to be employed.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi as modified by Fanning as applied to claim 1 above, and further in view of Segal et al. (US 6,167,251). The teachings of Razavi have been discussed above.

Razavi fails to show receiving of the music file through cellular means.

Segal shows (column 30, lines 15-25) receiving of MP3 files onto a cell phone.

In view of Segal's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known receiving of music files onto a cell phone as taught by Segal in the teachings of Razavi because a cell phone user may want to spontaneously listen to some song through their phone, without having to download through a wired connection.

7. Claims 16-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Razavi as modified by Fanning as applied to claim 1 above, and further in view of Britt, Jr. et al. (US 6,230,319).

Re claims 16 and 20: As discussed re claim 1 above, Razavi discloses wirelessly requesting audio the file may be a music file in that is received into flash memory. Flash memory is a form of non-volatile memory.

Drakoulis fails to show receiving a fail in two distinct communications.

Britt shows (column 3, lines 1-10) a system of resumable downloads whereby communication is broken during file download and then resumed.

In view of Britt's teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known two-communication download as taught by Britt in the teachings of Drakoulis because a system of resuming broken downloads avoids user frustration and saves time and bandwidth.

Re claim 17: Drakoulis has (column 4, line 12) a replay device which plays the music file.

The user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Re claim 18: The term 'database' is very broad and can cover any compilation of data. As noted, the user may, using this system, request MP3s from the ISP (column 15, line 14). For the ISP to serve these files, it must have them stored on a database of some form.

Re claim 19: The collection of files at the ISP (i.e. on the ISP's servers) must be loaded onto the server from somewhere i.e. 'a computer' separate from the server. It simply isn't practical to create all the digital music files locally. If this were true, the wireless serving computer would also have to be the recording studio where all files are originally created. In reality musical recording studios are dispersed throughout the country. Also the server must be coupled to the wireless communications network in order to do it's above-stated role (Razavi, column 15, lines 1-20).

### ***Response to Arguments***

8. The applicant has argued that the references do not teach peer-to-peer exchange of music files between automobiles.

9. The examiner notes that although no **single** reference teaches peer-to-peer exchange of music files between automobiles, this is not a requirement for an obviousness-type 103 rejection. Only a 102 rejection requires all of the limitations to be met in a single reference. The applicant's argument that "neither teaches nor suggests transferring music files between automobiles" (page 7) falls short because neither *independently* teaches this, but *in combination* they do.

10. In this case, Ravazi teaches music files obtained wirelessly in cars from a network and Fanning teaches peer – to – peer exchange of music files between two nodes on a network. These two references in combination **do** teach peer – to – peer exchange of music files among automobiles. Napster teaches peer – to – peer generally, showing, as cited in the previous action (column 4, lines 20-25) peer-to-peer action in which a first computer ('provider') serves files to another computer ('client') with the aid of a server. The motivation to do this was given in the previous action: "peer-to-peer action mitigates the problem of bandwidth bottlenecks associated with servers serving large music files."

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

12. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

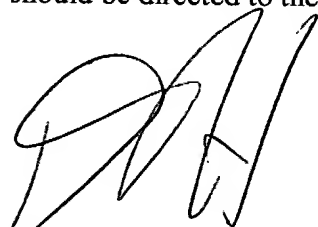
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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

15. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.



DH

April 18, 2003

Daniel A Hess  
Examiner  
Art Unit 2876



**THIEN M. LE**  
**PRIMARY EXAMINER**